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**State of Washington  
GROWTH MANAGEMENT HEARINGS BOARD  
FOR EASTERN WASHINGTON**

SUPERIOR ASPHALT & CONCRETE CO.,

Case No. 05-1-0012

Petitioner,

**FINAL DECISION AND ORDER**

v.

YAKIMA COUNTY,

Respondent,

COLUMBIA READY-MIX, INC.,

Intervenor.

**I. SYNOPSIS**

In December, 2001, Yakima County (County) adopted a resolution which suspended and placed a "moratorium" on the annual Plan 2015 amendment process pending development by Yakima County's Planning Department (now "Public Services Department" or "PSD") of proposals for Plan map amendments as part of Yakima County's five-year Comprehensive Plan update cycle.

On March 3, 2005, the County adopted Resolution 155-2005, which exempted Columbia's (Intervenor) request for a Plan 2015 map amendment from the "moratorium" on amendments to Plan 2015. Resolution 155-2005 also exempted Plan 2015 map amendment requests by the towns of Granger and Naches from the moratorium and directed PSD to process the map amendment requests by the two towns and Columbia.

On April 18, 2005, the Intervenor, Columbia, filed their application for a Plan 2015 amendment and major rezone. The Intervenor requested approximately 79 acres of agricultural resource land be designated as mineral resource land and rezoned to mining and a Plan 2015 text amendment to Yakima County's Agricultural Resource Mapping Criteria

1 No. 7, exempting the change from agricultural resource to mineral resource land from  
2 complying with the agricultural resource de-designation criteria imposed by Mapping Criteria  
3 No. 7.

4 On December 15, 2005, the County approved Resolution 720-2005 adopting  
5 Ordinance 10-2005, which amended Plan 2015 by changing the designation of 78.8 acres  
6 from agricultural resource to mineral resource; amended Plan 2015 to eliminate de-  
7 designation criteria for changes from agricultural resource designation to mineral resource  
8 designation; and granted a zone change for the 78.8 acres from agricultural to mining.

9 The County has not been challenged for the adoption of the moratorium, only on the  
10 County's selective modification. The Board finds that it does not have jurisdiction to  
11 examine the County's modification of the unchallenged moratorium. The permitting of the  
12 filing of one or more amendments is not properly before the Board.

13 The Board finds that the Petitioners have not carried their burden of proof in Issue 3,  
14 public participation. The County followed their public participation program and provided  
15 the public participation required for the consideration and adoption of the mapping and text  
16 amendments.

17 The Board finds that effective notice of the text amendment was given in this matter.  
18 The Petitioners have not carried their burden on Issues 4 and 5.

19 The Board finds that the text amendment, which allows the conversion of previously  
20 designated "agricultural resource" lands to mining without the use of Agricultural Resource  
21 Mapping Criteria No. 7, is not clearly erroneous and does not violate the GMA.

22 However, the Board finds that the County failed to properly conduct an  
23 environmental review of the text amendment. The County is required to review the  
24 countywide impact of the text amendment, which eliminates the use of Agricultural  
25 Resource Mapping Criteria No. 7 in cases involving the redesignation of agricultural resource  
26 lands to mineral resource lands. The actions of the County are clearly erroneous and the  
County is found out of compliance on Issue 7.

1 The Petitioners and Respondent both sought to supplement the record. All offered  
2 documents have been admitted with the exception of #6 of the Respondents, two articles  
3 from the Yakima Herald Republic on 8/10/05 and 9/07/05.

## 4 II. PROCEDURAL HISTORY

5 On December 22, 2005, SUPERIOR ASPHALT & CONCRETE CO., by and through its  
6 representatives, Charles Flower and Patrick Andreotti, filed a Petition for Review.

7 On January 5, 2006, the Board received Columbia Ready-Mix, Inc., Motion to  
8 Intervene on behalf of Respondent Yakima County.

9 On January 20, 2006, the Board heard the Motion to Intervene before the Prehearing  
10 conference. Having received no objections to intervention, the Board granted intervention  
11 status to Columbia Ready-Mix, Inc. on behalf of Respondent Yakima County.

12 On January 20, 2006, the Board held a telephonic Prehearing conference. Present  
13 were, Dennis Dellwo, Presiding Officer, and Board Member John Roskelley. Board Member  
14 Judy Wall was unavailable. Present for Petitioners was Charles Flower. Present for  
Respondent was Terry Austin. Present for Intervenors was Kenneth Harper.

15 On January 20, 2006, the Board issued its Prehearing Order.

16 On February 3, 2006, the Board received Petitioner's Motion to Supplement the  
Record and Petitioner's Additions to Index.

17 On March 23, 2006, the Board held the motion hearing. Present were, Dennis  
18 Dellwo, Presiding Officer, and Board Members John Roskelley and Judy Wall. Present for  
19 Petitioners was Charles Flower. Present for Respondent was Yakima County Prosecutor,  
20 Terry Austin. Present for Intervenors was Kenneth Harper.

21 On March 30, 2006, the Board issued its Order on Dispositive Motions.

22 On April 18, 2006, the Board received Petitioner's Second Motion and Affidavit to  
23 Supplement the Record.

24 On May 1, 2006, the Board issued Order on Petitioners Second Motion to Supplement  
25 Record.

1 On May 23, 2006, the Board held the hearing on the merits. Present were, Dennis  
2 Dellwo, Presiding Officer, and Board Members John Roskelley and Judy Wall. Present for  
3 Petitioners was Charles Flower Patrick Andreotti. Present for Respondent was Yakima  
4 County Prosecutor, Terry Austin. Present for Intervenors was Kenneth Harper.

### 5 **III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF** 6 **REVIEW**

7 Comprehensive plans and development regulations (and amendments thereto)  
8 adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon  
9 adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to  
10 demonstrate that any action taken by the respondent jurisdiction is not in compliance with  
11 the Act.

12 The Hearings Board will grant deference to counties and cities in how they plan  
13 under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated,  
14 "local discretion is bounded, however, by the goals and requirements of the GMA." *King*  
15 *County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561,  
16 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County*, and  
17 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly  
18 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and  
19 goals of the GMA.'" *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31  
20 P.3d 28 (2001).

21 Pursuant to RCW 36.70A.320(3) we "shall find compliance unless [we] determine  
22 that the action by [Jefferson County] is clearly erroneous in view of the entire record before  
23 the Board and in light of the goals and requirements of [the GMA]." In order to find the  
24 County's action clearly erroneous, we must be "left with the firm and definite conviction that  
25 a mistake has been made." *Department of Ecology v. Public Utility Dist. 1*, 121 Wn.2d 179,  
26 201, 849 P.2d 646 (1993).

27 The Hearings Board has jurisdiction over the subject matter of the Petition for  
28 Review. RCW 36.70A.280(1)(a).

1 **IV. ISSUES AND DISCUSSION**

2 **Issue No. 1:**

3 Did Yakima County violate RCW 36.70A.130, the Plan 2015 "Update and Maintenance  
4 Process", p. II-11, and the Washington State Constitution, Article I, Section 12, by declaring  
5 an "emergency" applicable only to Columbia to permit the processing of Columbia's Plan  
6 2015 map amendment request notwithstanding the County commissioners' suspension of  
7 the annual comprehensive Plan amendment process by YCC Resolution 651-2001 but  
8 denying all Yakima County property owners including at least 18 other property owners who  
9 had, before Columbia's application was filed with Yakima County, filed individual map  
10 amendment requests for their land to be designated "mineral resource", the opportunity to  
11 apply for comprehensive plan amendments?

12 **Conclusion:**

13 The Board dismissed this issue pursuant to the Respondent's motion, finding that the  
14 Growth Management Act (GMA) did not give the Board authority to hear and decide  
15 constitutional issues.

16 **Issue No. 2:**

17 Are the Yakima County Commissioners precluded by the suspension of annual  
18 Comprehensive Plan amendments by Resolution 651-2001 from considering Columbia's  
19 requested Plan text amendment?

20 **The Parties' Position:**

21 **Petitioners:**

22 The Petitioners object to the County permitting Columbia Ready-Mix, Inc. (Columbia)  
23 to file a request for a Comprehensive Plan (Plan) amendment while not allowing others to  
24 seek such an amendment. They contend that the lifting of the amendment moratorium just  
25 for Columbia was a violation of the GMA and therefore made such changes invalid. They  
26 further contend that the County did not have an emergency and, if they did, they did not  
properly reflect such emergency in findings of fact

**Respondent/Intervenors (County):**

The County/Intervenor contends that the County has the authority to allow  
amendments to be considered under these conditions. They believe that there was an

1 emergency and the findings properly reflect this. They further contend the amendment  
2 process could also be considered part of an annual amendment process. The County  
3 contends an alternative argument can be made claiming the Board does not have the  
4 authority to determine if the County properly exercised its authority, allowing exceptions to  
5 the moratorium.

6 The County argues that the shortage of concrete-grade gravel in Yakima County is  
7 sufficient to declare an emergency and consider exceptions to the moratorium. Other  
8 applicants were not claiming to have such concrete-grade gravel. Furthermore, the County  
9 points out that the findings found in the subject Resolution meet the requirements of the  
10 timing and content of such findings.

11 **Petitioners Reply Brief:**

12 The Petitioners claim there was no true emergency and, if there was, all pending  
13 "mineral resource" designation requests should have been considered. In addition, the  
14 finding of emergency is unsupported by the evidence in this case.

15 **Board Analysis:**

16 The Board in *Bergman V. City of Ephrata*, EWGMHB Case No. 99-1-0008C (Final  
17 Decision and Order, December 22, 1999) reviewed the finding of emergency, yet for  
18 reasons different than are found here. In that case, the Board believed that such a finding  
19 frustrated key provisions of the GMA and were not appropriate. Here, the County found that  
20 there was an emergency. They found that the County's "inability to consider the application  
21 represented so severe of an implication to the local sand and gravel industry and the  
22 economic welfare of Yakima County as to constitute a countywide emergency." While the  
23 Petitioners disagree with this finding, the Board does not have the authority to review or  
24 object to it. The County has the authority to determine if an emergency exists and great  
25 deference is given to such a decision. The Board is not the proper forum to review whether  
26 such a determination is correct. The emergency declaration was not an excuse to avoid the  
other requirements of the GMA. Public participation was not dispensed with. The Petitioners  
have not carried their burden of proof on this issue and the Board lacks proper jurisdiction.

1  
2 **Conclusion:**

3 The Petitioners have not carried their burden and the Board does not find the County  
4 out of compliance on this issue, Issue 2.

5 **Issue No. 3:**

6 Did Yakima County violate the "public participation" requirements of RCW  
7 36.70A.140 by failing to establish and implement procedures providing for early, continuous  
8 and meaningful public participation in the amendment of comprehensive plans including the  
9 failure to provide adequate, accurate and informative notice of proposed amendments?

9 **The Parties' Position:**

10 **Petitioners:**

11 The Petitioners contend the County violated the GMA "public participation"  
12 requirements by failing to establish and implement procedures providing for early,  
13 continuous and meaningful public participation in the amendment of comprehensive plans  
14 including the failure to provide adequate, accurate and informative notice of proposed  
15 amendments. Except for specific challenges to the adequacy of the notice given, the  
16 Petitioners refer to no specific action or lack of opportunity for public participation. The  
17 adequacy of notice will be further addressed in Issue No. 4.

17 **Respondent/Intervenors:**

18 The County listed in detail the public hearings and the opportunities for public  
19 participation. The list is extensive and is shown to comply with the Public Participation Plan  
20 of the County. The bulk of the argument centered on the adequacy of the "notice" given to  
21 the public. That will be discussed in Issue No. 4.

22 **Petitioners reply Brief:**

23 The Petitioners distinguished between two types of "public notice", General and  
24 Limited. General notice includes the public notices of the application and public hearings.  
25 Limited notice included the County's Preliminary Mitigated Determination of non-significance  
26 (MDNS) and later, a Final MDNS, which were mailed to surrounding landowners, consulting

1 agencies and interested parties. The Petitioners claim that the limited notices provided no  
2 more information about the proposed text amendment than what was included in the  
3 inadequate general notices.

4 **Board Analysis:**

5 The County is required to adopt a public participation plan (PPP), and Yakima  
6 County has done so. The County's PPP was not challenged during the time allowed. The  
7 Petitioners cannot now challenge such PPP as being inadequate. The County is however,  
8 required to follow its PPP. Issue No. 3 challenges the County, claiming it has failed to  
9 establish and implement procedures providing for early, continuous and meaningful public  
10 participation in the amendment of comprehensive plans, including the failure to provide  
11 adequate, accurate and informative notice of proposed amendments. There is no claim that  
12 the County has not followed its Public Participation Plan. The Petitioner cannot, now,  
13 contend that the PPP adopted was not an adequate Public Participation Plan. The time for  
such a claim has passed.

14 A review of the Record shows that the County has followed its public participation  
15 plan. Numerous hearings were held and the public had adequate opportunities to review  
16 and comment on the amendments considered. The adequacy of SEPA review will be  
17 considered later in this Order.

18 **Conclusion:**

19 The Petitioners have not carried their burden of proof and the Board will not find the  
20 County out of compliance on Issue No. 3.

21 **Issue No. 4:**

22 Did Yakima County fail to provide effective notice of the contemplated Plan 2015 text  
23 amendment in violation of RCW 36.70A.035 and .140 because the notices failed to describe,  
24 provide notice and clearly state: (a) the nature of the proposed amendment, (b) the  
25 geographical magnitude of the proposed amendment, (c) Columbia's proposed text  
26 amendment would change criteria and standards for de-designation of "agricultural  
"agricultural resource" land resulting in a decrease of the amount of Yakima County's land designated  
"agricultural resource", (d) Columbia's proposed text amendment, was for a Yakima County-



1 wide application, not "site specific" like Columbia's Plan map amendment and rezone  
2 request?

3 **The Parties' Position:**

4 **Petitioners:**

5 The Petitioners contend that notice of the amendments was patently incomplete and  
6 misleading. They point out that the first notice mentioned the request to add language to  
7 the Agricultural Resource Areas text in the Land Use Chapter of Plan 2015, Volume 1,  
8 Chapter I. They contend that this did not give proper notice. That same language is said to  
9 have again appeared in the second notice. The third notice on October 7, 2005, provided  
10 that the proposal is to include a text amendment to clarify that the Agricultural De-  
11 Designation Process is not applicable when agricultural resource land is to be replaced by  
12 different economic resource designation. This language is to be added to the Agricultural  
Resources Areas text in the Land Use subchapter of Plan 2015.

13 The Petitioners contend the above notices failed to provide any information about  
14 the nature or magnitude of the proposed change by the text amendment. They point out  
15 that the County failed to disclose that the proposed amendment fatally weakens existing,  
16 primary, countywide, previously adopted policies for the preservation of agricultural  
17 resource lands and, will result in a decrease, countywide, of land designated as agricultural  
18 resource lands.

19 The Petitioner adds that the Planning Commission recommended the County provide  
20 additional notice for the proposed text amendment and criteria for de-designating  
21 agricultural resource lands.

21 **Respondent/Intervenors:**

22 The County argues that there were sufficient notices and hearings throughout the fall  
23 of 2005, addressing the Plan 2015 amendments sought by Columbia. They point out that  
24 this is not a case of mailing a single notice to neighboring property owners. Instead, five  
25  
26

1 separate notices were mailed, posted, and/or published. They contend notice was widely  
2 disseminated, and included notice to appropriate governmental agencies.

3 The County contends that the "effective notice" standard of the GMA was met.  
4 Yakima County states that it used its specified GMA public participation procedures found in  
5 Title 16B YCC. Each notice cited in their brief referred to the existence of a map  
6 amendment and a Plan text amendment, and each notice specifically stated that the text  
7 amendment would alter the standards for agricultural resource land designations. The  
8 County contends that there is no rational way for Petitioner to claim that citizens were  
9 denied a full opportunity to be heard by the Planning Commission and the Board of County  
10 Commissioners (BOCC). When the Planning Commission members recommended additional  
11 notice of the text amendment, that notice was provided prior to subsequent public  
comment.

12 **Petitioners Reply Brief:**

13 The Petitioner contends that the notice and the comments from the public were site  
14 specific and did not address the countywide impact from the change.

15 **Board Analysis:**

16 The GMA requires a process that is reasonably calculated to give notice of proposed  
17 amendments to property owners and other affected and interested individuals, tribes,  
18 government agencies, businesses, school districts, and organizations. Examples of such  
19 notice are found in the GMA, such as posting the property, publishing notice, notifying  
20 public or private groups with known interest, placing notices in appropriate regional,  
neighborhood journals, and notice in agency newsletters or mailing lists. RCW 36.70A. 035.

21 It is important that this notice inform the public of the changes contemplated. The  
22 public needs to understand the changes and know what the impact is upon the County's  
23 Comprehensive Plan. In this case, the County provided extensive notice and opportunity for  
24 public participation. The notice, while initially weaker, was made more specific while the  
25 public still had an opportunity to participate. The County provided adequate notice to the  
26 appropriate parties.

1 **Conclusion:**

2 The Petitioners did not carry their burden of proof and the County is not found out of  
3 compliance on Issue No. 4.

4 **Issue No. 5:**

5 Did the 10/04/05 County Commissioners "Notice of Public Hearing", fail to provide  
6 correct, effective notice contrary to, and in violation of RCW 36.70A140, by inaccurately  
7 describing the proposed text amendment as a "clarification" of Plan 2015 and not a  
"substantial" change of Plan 2015 after a specific finding by the Yakima County Planning  
Commission the text amendment was a "change", and was not a "clarification"?

8 **Board Analysis:**

9 This issue is addressed in Issue No. 4 and the Petitioners have not carried their  
10 burden of proof.

11 **Conclusion:**

12 The Petitioners did not carry their burden of proof and the County is not found out of  
13 compliance on issue No. 5.

14 **Issue No. 6:**

15 Did Yakima County violate WAC 197-11-310(6) by holding "open record" Planning  
16 Commission hearings on Columbia's application on 9/07/05 and 9/08/05, less than the  
17 fifteen (15) days required by WAC 197-11-310(6) after the 9/01/05 issuance of Yakima  
County's "Mitigated Determination of Non-Significance" for Columbia's application?

18 **The Parties' Position:**

19 **Petitioners:**

20 The Petitioners contend that the County held an open record Planning Commission  
21 hearing less than fifteen days after the issuance of Yakima County's Mitigated  
22 Determination of Non-Significance for Columbia's application. The Petitioner explains that  
23 the required regulations in WAC 197-11-310(6) were not met and therefore the County  
24 should be found out of compliance.

1 **Respondent/Intervenors:**

2       The Respondent directs the Board to specific language and what is required, arguing  
3 that the County followed such requirements. They contend that the Planning Services  
4 Department issued its threshold determination using the DNS process contained in WAC  
5 197-11-340, instead of the optional DNS process authorized by WAC 197-11-355. The  
6 Respondent summarizes the procedures under the DNS process and contends it was  
7 appropriately followed. The issuance date was July 25, 2005, and the first Planning  
8 Commission hearing was September 7, 2005. Over a month had elapsed. They contend the  
9 Petitioner mistakenly believed that the date of issuance was the date of issuance of the  
10 "final" MDNS, which occurred on September 1, 2005. The Respondent points out that the  
11 SEPA regulations do not contain reference to the concepts of a "preliminary" or "final"  
12 MDNS.

12 **Petitioners/Intervenors Reply Brief:**

13       The Petitioners contend that the record shows the County reviewed the amendment  
14 pursuant to WAC 197-11-355, not WAC 197-11-340(2). The record is reviewed in their brief  
15 reflecting that the elements of the County's notice cite conditions that apply to 355, not  
16 340.

16 **Board Analysis:**

17       The record reflects the County did use the process in WAC 197-11-340. Therefore,  
18 the County has not improperly held hearings less than the fifteen days after the issuance of  
19 its SEPA MDNS. The -340 processes provide that the date of issuance is the date of the  
20 preliminary MDNS. The MDNS was issued and available for comment more than 15 days  
21 prior to the open record pre-decision hearing. The Petitioners have not carried their burden  
22 of proof.

23 **Conclusion:**

24       The Petitioners have not carried their burden of proof and the County is not found  
25 out of compliance on Issue No. 6.

1 **Issue No. 7:**

2 Did Yakima County violate RCW Chap. 43.21C by failing to conduct any  
3 environmental review about the impact of the proposed text amendment which was not  
4 "site specific" but applicable to, and impacted all, Yakima County land previously designated  
"agricultural resource"?

5 **The Parties' Position:**

6 **Petitioners:**

7 The Petitioners contend that there was absolutely no consideration of the potential  
8 environmental significance and impacts of the proposed amendment to Mapping Criteria No.  
9 7. They point out that Columbia's Environmental Checklist does not even mention the  
10 proposed text amendment.

11 The notice of Environmental Review – Mitigated Determination of Non-Significance  
12 gives the impact of the text amendment as a change, which adds clarity to the existing  
13 policies in Plan 2015 and does not constitute a change in those policies. No impacts are  
listed as associated with the change.

14 The Petitioners argue the County has admitted that the amendment was a change  
15 not a clarification. They go on to remind the Board that the 2003 update of the agricultural  
16 resource section of the Plan was subject to rigorous environmental review generating a staff  
17 report and was integrated into a SEPA/GMA document with supporting documents totaling  
18 112 pages.

19 The Petitioners contend that the effect of Columbia's proposed amendment of  
20 Mapping Criteria No. 7 eliminates from consideration all criteria for a de-designation of  
21 agricultural resource to mineral resource. They argue that the potential adverse impact of  
22 Columbia's amendment on presently designated agricultural resource lands throughout  
23 Yakima County and on the quality of life of the County residents on and near agricultural  
resource land is immense and unprecedented.

24 RCW 43.21C.030c requires environmental review of the proposed amendment. The  
25 Petitioners contend that WAC 197-11-315 requires an Environmental Checklist be prepared  
26

1 for all proposals subject only to limited exceptions, which are not applicable here. Under  
2 WAC 197-11-330, a threshold determination is required to be made after the review of the  
3 Checklist. The Petitioners point out that the Checklist prepared for Columbia's proposals did  
4 not mention nor discuss the environmental impacts of Columbia's proposed amendment of  
5 Mapping Criteria No. 7, so there was no environmental information about Columbia's  
6 proposed amendment of Mapping Criteria No. 7 for the responsible official to review.

**Respondent/Intervenors:**

7 The Respondent contends that the MDNS identified the Plan text amendment and  
8 provided an impact analysis of the expected effect of the text amendment. (Exhibit 10).  
9 They go on to argue that the Petitioners did not support their arguments by sound  
10 reasoning or any evidence. There is no evidence that the text amendment is likely to pose a  
11 significant probable adverse environmental impact. Such absence is contended to deprive  
12 the Board of a basis to find that Yakima County committed clear error in making its  
13 threshold determination on the text amendment. The County contends that the non-project  
14 SEPA action does not allow any land currently designated as agricultural resource land to be  
15 converted to mineral resource land.

**Petitioners Reply Brief:**

16 The Petitioners argue that their only burden at this point is to show Yakima County  
17 failed to conduct the environmental review required by RCW 43.21C and WAC 197-11.  
18 Failure to conduct any environmental review for the text amendment has been established  
19 beyond dispute.

**Board Analysis:**

20 RCW 43.21C.030© provides:

21  
22 The legislature authorizes and directs that, to the fullest extent possible: (1)  
23 the policies, regulations and laws of the State of Washington shall be  
24 interpreted and administered in accordance with the policies set forth in this  
chapter, and (2) all branches of government of this state, including state  
agencies, municipal and public corporation and counties, shall:

25 \*\*\*

1 (C) Include in every recommendation or report on proposals for legislation  
2 and other major actions significantly affecting the quality of the  
3 environment, a detailed statement by the responsible official on:

- 4 (i) The environmental impact of the proposed action;  
5 (ii) Any adverse environmental effects which cannot be avoided should the  
6 proposal be implemented;  
7 (iii) Alternatives to the proposed action;  
8 (iv) The relationship between local short-term uses of man's environment  
9 and the maintenance and enhancement of long-term productivity; and  
10 (v) Any irreversible and irretrievable commitments of resources which  
11 would be involved in the proposed action should it be implemented; ...

12 It is clear that an amendment to the Comprehensive Plan, such as this, requires  
13 environmental review. Neither of the parties disagrees with this. However, the County is  
14 contending that such a review has been preformed and the Petitioners disagree.

15 A review of the Notice of Environmental Review – Mitigated Determination of Non-  
16 Significance, shows:

17 "The proposed change adds clarity to the existing policies in Plan 2015 but  
18 does not constitute a change in those policies ... The language clarifies  
19 existing policies and is explanatory in nature. There are no impacts associated  
20 with enhancing the clarity of existing policies. No mitigation is required."  
21 Exhibit 10

22 Of the 14 pages of SEPA Final Mitigated Determination of Nonsignificance, only the  
23 total of one half pages are devoted to the review of the text amendment. The portrayal of  
24 such a dramatic change as a "clarification" is unacceptable. The text amendment allows the  
25 redesignation of agricultural resource lands to mineral resource lands without the use of the  
26 criteria designed for such dedesignation. It is clear that no proper SEPA review was  
performed upon the text amendment. The misnomer "clarification" prevents the  
consideration of the true impact of such a change.

The GMA and SEPA statutes require a complete environmental review. The  
amendment of text language adopted here is not a clarification, but a dramatic change that

1 has the potential of impacting the County as a whole. That impact needs to be reviewed  
2 before the adoption of such an amendment.

3 **Conclusion:**

4 The Petitioners have carried their burden of proof and shown that the actions of the  
5 County are clearly erroneous. The County is found out of compliance on Issue No. 7, for its  
6 failure to properly subject the text amendment to SEPA review.

7 **Issue No. 8:**

8 Did YCC Ordinance No. 10-2005 convert previously designated "agricultural resource"  
9 land to mining inconsistent with, and violative of, RCW 36.70A020, WAC 265-190-020,  
10 Yakima County Plan 2015, and King County v. Puget Sound Growth Management Hearings  
11 Board, 142 Wn.2d 543, 558 (2000)?

12 **The Parties' Position:**

13 **Petitioners/Intervenors:**

14 The Petitioners argue that the legislature expressed their intent that Agricultural  
15 Resource lands take precedence over and are to be preserved at the expense of other  
16 resource lands, including mineral resource land. Their brief cites the statute, regulations and  
17 court decisions that emphasize agricultural lands' importance.

18 The Petitioners contend that once Yakima County designated agricultural land it has  
19 an unequivocal, specific Washington State statutory "mandate" to protect and preserve the  
20 agricultural designation. The County must also give agricultural land precedence over  
21 competing resource or other designations, unless and until the County engages in the de-  
22 designation analysis required by *Orton Farms*, CPSGMHB No. 04-3-0007c, 2004 GMHB Lexis  
23 57, p. 25-26, and conclude that the change is appropriate and consistent with the law.

24 **Respondent/Intervenors:**

25 The County argues that the GMA requires that cities and counties plan for natural  
26 resource industries. The phrase "natural resource industries" is broadly defined and is not  
restricted to agricultural land. Mining is indisputably a form of natural resource-based  
industry. One resource land type has no statutory or judicial precedence or importance over



1 the other. Agricultural lands, mineral lands and forestlands are equal and one is not more  
2 important than the other.

3 The County points out that the de-designation criteria developed for agricultural  
4 lands are useless here. The land, which is sought to be changed, is agricultural resource  
5 land and there is no argument about that. However, mineral lands are found where they  
6 exist. They can be in forests, agricultural lands or in riverbeds. Nature controls the location.

7 The County contends that it must strike a balance in land use designations and  
8 deference must be given to the County making such a decision. The text amendment is said  
9 to be the creation of a context in which competing natural resource land designations may  
10 be reviewed under policies contained throughout Plan 2015. It does not remove the  
generally applicable status of protection for agricultural resource lands.

11 **Petitioners Reply Brief:**

12 The Petitioners agree with the County that the County must strike a balance between  
13 competing resource uses. However, they believe that the planning jurisdiction must include  
14 rigorous analysis and a rational process evaluating the objective criteria when previously  
15 designated resource land is changed to another designation. The Petitioners contend that a  
16 rational process for evaluating objective criteria is required to justify a change in the  
agricultural resource designation.

17 **Board Analysis:**

18 The GMA requires the County to designate and protect natural resource lands. RCW  
19 36.70A.170. There is no hierarchy of resource lands; they are listed alphabetically if they  
20 are organized with a plan at all. The numerous court cases dealing with agricultural  
21 resource lands occur primarily due to the quantity and nature of the land rather than the  
22 priority over other resource lands. The Courts have had more opportunities to address  
23 issues involving agricultural resource lands. Nowhere does the court find that such lands are  
24 more important than other resource lands.

25 The Board does not find that agricultural resource lands take precedence over other  
26 resource land, including mineral resource land. The Board also recognizes that the County

1 must balance competing resource uses and such balancing should be deferred to. While the  
2 development of criteria for such balancing would be beneficial, the Board will not find the  
3 County out of compliance if such criterion does not exist.

4 The resource lands required to be designated, then protected, under the GMA are  
5 equal in priority. One is not required to be protected more so than the other.

6 **Conclusion:**

7 The Petitioners have not carried their burden of proof and the County is not found  
8 out of compliance on Issue No. 8.

9 **V. FINDINGS OF FACT**

- 10 1. Yakima County is a county located East of the crest of the Cascade  
11 Mountains and is required to plan pursuant to RCW 36.70A.040.
- 12 2. Petitioner is a Corporation doing business in the State of Washington  
13 and participated in the hearings where Resolution 155-2005 was  
14 adopted, by written and oral testimony. Petitioner raised the matters  
15 addressed in their Petition for Review to the County in its participation  
16 below.
- 17 3. The County adopted Resolution 155-2005 on March 1, 2005.
- 18 4. Resolution 155-2005 exempted Columbia's request for a Plan 2015 map  
19 amendment from the "moratorium" on amendments to Plan 2015. That  
20 Resolution also exempted Plan 2015 map amendment requests by the  
21 towns of Granger and Naches from the moratorium and directed PSD to  
22 process the map amendment requests by the two towns and Columbia.
- 23 5. On December 15, 2005, The County adopted Resolution 720-2005  
24 which adopted Ordinance 10-2005 and amended Plan 2015 by  
25 changing the designation of 78.8 acres from agricultural resource to  
26 mineral resource lands; amended Plan 2015 to eliminate de-designation  
criteria for changes from agricultural resource designation to mineral  
resource designation; and granted a zone change for 78.8 acres from  
agricultural to mining. Petitioner filed its petition for review of  
Resolution 155-2005 and Ordinance 10-2005 on December 22, 2005.
6. Yakima County has a public participation plan and this plan was not  
challenged within the time provided by the GMA.

7. The County did not properly perform an environmental review of the impact of the text amendment adopted under Resolution 720-2005.
8. Nowhere does the Board find that agricultural resource lands are more important than other resource lands.
9. The Board does not find that agricultural resource lands take precedence over other resource land, including mineral resource land.
10. The Resource lands required under the GMA to be designated and protected are equal in priority.

## **VI. CONCLUSIONS OF LAW**

1. This Board has jurisdiction over the parties to this action.
2. With the exception of Issue No. 1, this Board has jurisdiction over the subject matter of this action.
3. Petitioners have standing to raise the issues listed in the Prehearing Order.
4. The Petition for Review in this case was timely filed.
5. The County provided adequate public notice and participation in the adoption of the Resolution and Ordinance, which is the subject of this appeal.
6. The County did not conduct the environmental review required by RCW 43.21C and the Growth Management Act.
7. The Resource lands required under the GMA to be designated and protected are equal in priority.

## **IX. ORDER**

1. The Board does not find the County out of compliance on Issue Nos. 2, 3, 4, 5, 6, and 8.
2. The Board finds that the Petitioners have carried their burden of proof and shown that the actions of the County were clearly erroneous in

1           their failure to properly conduct the environmental review as required  
2           by RCW 43.21C and the Growth Management Act. The County is out of  
3           compliance.

- 4           3.     Yakima County must take the appropriate legislative action to bring  
5           themselves into compliance with this Order by **September 18, 2006,**  
6           **90 days** from the date issued. The following schedule for compliance,  
7           briefing and hearing shall apply:

8           Compliance Due	Sept. 18, 2006
9           Statement of Action Taken to 10          Comply (County to file and serve on 11          all parties)	Sept. 25, 2006
12          Petitioners' Objections to a Finding 13          of Compliance Due	Oct. 9, 2006
14          County's Response Due	Oct. 23, 2006
15          Petitioners' Optional Reply Brief Due	Oct. 30, 2006
16          Telephonic Compliance Hearing. 17          Parties will call: <b>360-709-4803</b> 18 <b>followed by 526437 and the #</b> 19 <b>sign. Ports are reserved for Mr.</b> 20 <b>Flower, Mr. Austin, and Mr.</b> 21 <b>Harper</b>	Nov. 6, 2006, 10 a.m.

22           If the County takes legislative compliance actions prior to the date set forth in this  
23           Order, it may file a motion with the Board requesting an adjustment to this compliance  
24           schedule.

25           **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

26           **Reconsideration:**

**Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this  
Order to file a petition for reconsideration. Petitions for reconsideration shall  
follow the format set out in WAC 242-02-832. The original and four (4) copies of  
the petition for reconsideration, together with any argument in support thereof,  
should be filed by mailing, faxing or delivering the document directly to the  
Board, with a copy to all other parties of record and their representatives. Filing  
means actual receipt of the document at the Board office. RCW 34.05.010(6),**

1 WAC 242-02-330. The filing of a petition for reconsideration is not a  
2 prerequisite for filing a petition for judicial review.

3 **Judicial Review:**

4 Any party aggrieved by a final decision of the Board may appeal the decision to  
5 superior court as provided by RCW 36.70A.300(5). Proceedings for judicial  
6 review may be instituted by filing a petition in superior court according to the  
procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.

7 **Enforcement:**

8 The petition for judicial review of this Order shall be filed with the appropriate  
9 court and served on the Board, the Office of the Attorney General, and all parties  
10 within thirty days after service of the final order, as provided in RCW 34.05.542.  
11 Service on the Board may be accomplished in person or by mail. Service on the  
Board means actual receipt of the document at the Board office within thirty  
days after service of the final order.

12 **Service:**

13 This Order was served on you the day it was deposited in the United States mail.  
14 RCW 34.05.010(19)

15 **SO ORDERED** this 20<sup>th</sup> day of June 2006.

16 EASTERN WASHINGTON GROWTH MANAGEMENT  
17 HEARINGS BOARD

18 \_\_\_\_\_  
19 Dennis Dellwo, Board Member

20 \_\_\_\_\_  
21 Judy Wall, Board Member

22 \_\_\_\_\_  
23 John Roskelley, Board Member